

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
IN RE: Acetaminophen - ASD-ADHD : 22md3043 (DLC)
Products Liability Litigation : 22mc3043 (DLC)
: ORDER
----- X

DENISE COTE, District Judge:

An Order of January 16, 2024 ("OTSC") provided that plaintiffs in any Member Case of this MDL in which an SFC was served on or after January 12, 2024 shall have 21 days from the date of service to show cause why summary judgment should not be entered in favor of the defendants named in that Member Case for failure to 1) present admissible evidence of general causation; 2) show any error in the December 18, 2023 Rule 702 Opinion; and/or 3) show why the December 18, 2023 Rule 702 Opinion does not apply to their Member Case.

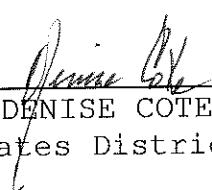
On February 1, in response to the OTSC, plaintiffs in five member cases (the "Mota Plaintiffs") indicated their intent to submit admissible expert evidence, in the form of the expert testimony of Roberta B. Ness, M.D., M.P.H., that acetaminophen can cause attention deficit hyperactivity-disorder ("ADHD"). On February 7, the Mota Plaintiffs submitted Dr. Ness's expert report (the "Ness Report"). Rule 702 motions addressed to the Ness Report will be fully submitted on June 6.

Plaintiffs in several Member Cases served on or after

January 12, 2024 have submitted responses to the OTSC adopting the Ness Report. Defendants have nonetheless sought an immediate entry of judgment against those plaintiffs, arguing that only the Mota Plaintiffs should be able to rely on the Ness Report because to allow otherwise would amount to an impermissible attempt at a "do-over" on the issue of general causation. Since this Court has permitted Rule 702 motion practice addressed to the Ness Report, a case served on or after January 12, 2024 may respond to the OTSC by indicating reliance on the Ness Report. Accordingly, it is hereby

ORDERED that plaintiffs in any Member Case of this MDL in which an SFC was served on or after January 12, 2024 may satisfy their obligation to present admissible evidence of general causation by adopting the Ness Report in a timely-filed response to the OTSC.

Dated: New York, New York
March 15, 2024


DENISE COTE

United States District Judge